



ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 52
[EPA-R01-OAR-2009-0919; A-1-FRL-9773-3]

**Approval and Promulgation of Air Quality Implementation
Plans; Connecticut; Regional Haze**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental proposed rule.

SUMMARY: On March 26, 2012, the Environmental Protection Agency (EPA) proposed to approve a revision to the Connecticut State Implementation Plan (SIP) that addresses regional haze for the first planning period from 2008 through 2018. The SIP was submitted by the Connecticut Department of Environmental Protection (now known as Connecticut Department of Energy and Environmental Protection or “CT DEEP”) on November 18, 2009, with additional submittals on February 24, 2012 and March 12, 2012. In the March 26, 2012 rulemaking, pursuant to CT DEEP’s request under parallel processing, EPA proposed approval of Connecticut’s proposed regulation establishing an intra-state nitrogen oxides (NO_x) trading program. This rule was designed to serve as a Clean Air Interstate Rule (CAIR) replacement rule and was one component of the State’s alternative to Best Available Retrofit Technology (BART) plan. Connecticut is, however, along with the other eastern States, continuing to implement CAIR. On November 23, 2012, CT DEEP submitted a letter withdrawing the State’s February 24, 2012 parallel processing request of its CAIR replacement rule. In today’s action, EPA is supplementing our March 26, 2012 proposal to include the proposed approval of Connecticut’s alternative to BART plan based in part on Connecticut’s CAIR rule, as originally submitted by the State on November 18, 2009.

DATES: Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R01-OAR-2009-0919 by one of the following methods:

1. www.regulations.gov : Follow the on-line instructions for submitting comments.
2. E-mail: arnold.anne@epa.gov
3. Fax: (617) 918-0047.
4. Mail: "Docket Identification Number EPA-R01-OAR-2009-0919," Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912.
5. Hand Delivery or Courier. Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, (mail code OEP05-2), Boston, MA 02109 - 3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R01-OAR-2009-0919. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided,

unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov, or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your

inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the State submittal are also available for public inspection during normal business hours, by appointment at the Bureau of Air Management, Department of Energy and Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106-1630.

FOR FURTHER INFORMATION CONTACT: Anne McWilliams, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square – Suite 100, (Mail Code OEP05-02), Boston, MA 02109-3912, telephone number (617)918-1697, fax number (617)918-0697, e-mail mcwilliams.anne@epa.gov

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Throughout this document, wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

In section 169A(a)(1) of the 1977 Amendments to the Clean Air Act (CAA), Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas¹ which impairment results from manmade air pollution." Congress added section 169B to the CAA in 1990 to address regional haze. The EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35714)("the Regional Haze Rule"). The requirements of the Regional Haze rule are summarized in our March 26, 2012 proposed approval of the Connecticut Regional Haze SIP. See 77 FR 12367.

On November 18, 2009, the Bureau of Air Management of the CT DEEP submitted revisions to the Connecticut SIP to address regional haze, with supplemental submittals on February 24, 2012, and March 12, 2012. One component of the November 18, 2009 regional haze submittal was a demonstration that the implementation of Regulations of Connecticut State Agencies (RCSA) Section 22a-174-22, "Control of Nitrogen Oxides Emissions," including subdivision 22a-174-22(e)(3), and RCSA Section 22a-174-22c, "The Clean Air Interstate Rule (CAIR)

¹ Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977 (42 U.S.C. 7472(a)). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value (44 FR 69122, November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions (42 U.S.C. 7472(a)). Although States and Tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to "mandatory Class I Federal areas." Each mandatory Class I Federal area is the responsibility of a "Federal Land Manager" (FLM). (42 U.S.C. 7602(i)). When we use the term "Class I area" in this action, we mean a "mandatory Class I Federal area."

Nitrogen Oxides (NO_x) Ozone Season Trading Program," provided greater reduction in NO_x emissions than would be achieved by the installation of source-by-source BART NO_x controls.

In the February 24, 2012 supplemental submittal, CT DEEP requested the parallel processing of proposed RCSA Section 22a-174-22d, "Post-2011 Connecticut Ozone Season NO_x Budget Program" as a replacement to RCSA Section 22a-174-22c. The proposed RCSA Section 22a-174-22d limited Connecticut's intra-state ozone season NO_x trading budget to 2,691 tons, the same budget as included in the CAIR Ozone Season Trading Program.²

As part of the March 26, 2012 rulemaking, EPA proposed to approve proposed RCSA Section 22a-174-22d and proposed to approve Connecticut's alternative to BART program for NO_x, of which this rule was one component.

When parallel processing, EPA proposes to approve a rule before the State's final adoption of the regulation. In its February 24, 2012 supplemental submittal, Connecticut indicated that they planned to have a final adopted regulation prior to our final action on its Regional Haze SIP. Under the parallel processing procedure, after a State submits its final adopted regulation, EPA will review the regulation to determine whether it differs from the proposed regulation. If the final regulation does differ from the proposed regulation, EPA will determine whether these differences are significant. (Ordinarily, changes that are limited to issues such as allocation methodology would not be deemed significant for SIP approval purposes, assuming the methodology does not lead to allocations in excess of the total state budget.) Based on EPA's determination regarding the significance of any changes in the final regulation, EPA would then

² See 77 FR 17367 for a full discussion of the Connecticut's Alternative to BART Program.

decide whether it is appropriate to prepare a final rule and describe the changes in the final rulemaking action, re-propose action based on the State's final adopted regulation, or other such action as may be appropriate.

Today's supplemental notice of proposed rulemaking only deals with issues associated with Connecticut's request to parallel process the proposed RSCA Section 22a-174-22d as a replacement of RSCA Section 22a-174-22c. Other aspects of EPA's March 26, 2012 proposal remain unchanged.

II. The Relationship of the CAIR and the Cross-State Air Pollution Rule (CSAPR) to the Connecticut Regional Haze SIP

CAIR required certain states to reduce emissions of sulfur dioxide (SO₂) and NO_x that significantly contribute to downwind nonattainment of the 1997 National Ambient Air Quality Standards (NAAQS) for fine particulate (PM_{2.5}) and ozone. See 70 FR 25162 (May 12, 2005). CAIR established emissions budgets for SO₂ and NO_x. On October 13, 2006, EPA's "Regional Haze Revisions to Provisions Governing Alternative to Source-Specific Best Available Retrofit Technology (BART) Determinations; Final Rule" (hereinafter known as the "Alternative to BART Rule") was published in the Federal Register. See 71 FR 60612. This rule established that states participating in the CAIR program or other control programs need not require BART for SO₂ and NO_x at BART-eligible electric generating units (EGUs). As a result, many States relied on CAIR as an alternative to BART for SO₂ and NO_x for their subject EGUs. The regional haze SIP submitted by Connecticut on November 18, 2009 relied on the procedure set forth in the Alternative to BART Rule to demonstrate that the CAIR ozone season NO_x budget

for Connecticut, in conjunction with Connecticut's previously adopted non-ozone season NO_x limits, provided greater visibility improvement than would the installation of source-specific BART NO_x controls.

CAIR was later found to be inconsistent with the requirements of the CAA and the rule was remanded to EPA. See *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008). The court left CAIR in place until replaced by EPA with a rule consistent with its opinion. See *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008).

EPA promulgated the Cross-State Air Pollution Rule (CSAPR), to replace CAIR in 2011. See 76 FR 48208 (August 8, 2011). EPA subsequently determined that the trading programs in CSAPR could also serve as an alternative to source-by-source BART. See 77 FR 33642 (June 7, 2012). Connecticut, which was subject to ozone season NO_x controls under the CAIR program, but not subject to any of the requirements of CSAPR, did not have the option of relying on CSAPR as an alternative to BART.

On December 30, 2011, the D.C. Circuit Court issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the D.C. Circuit stayed CSAPR pending the court's resolutions of the petitions for review of that rule in *EME Homer Generation, L.P. v. EPA* (No. 11-1302 and consolidated cases). The court also indicated that EPA is expected to continue to administer CAIR in the interim until the court rules on the petitions for review of CSAPR.

On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR “pending the promulgation of a valid replacement.” *EME Homer Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir., August 21, 2012).³

In light of the vacatur and remand of CSAPR and the continuation of CAIR, CT DEEP has not finalized its adoption of the Connecticut CAIR replacement rule, RCSA Section 22a-174-22d. In a letter dated November 23, 2012, CT DEEP withdrew its February 24, 2012 request for parallel processing of this regulation.

III. EPA’s Assessment

Due to the unique circumstances surrounding Connecticut’s development of its regional haze SIP and for the reasons explained below, EPA is proposing to approve Connecticut’s Alternative to BART program based on, in part, the use of CAIR ozone season NO_x reductions. As a result of the decision of the D.C. Circuit in *EME Homer Generation, L.P. v. EPA*, CAIR remains in place and enforceable until substituted by a “valid” replacement rule. To the extent that Connecticut is relying on ozone season CAIR as one element of the Alternative to BART program, the recent directive from the D.C. Circuit in *EME Homer* ensures that the reductions associated with CAIR will be permanent and enforceable for the foreseeable future. EPA has been ordered by the Court to develop a new rule and the opinion makes clear that, after promulgating that new rule, EPA must provide states an opportunity to draft and submit SIPs to implement that rule. CAIR thus cannot be replaced until EPA has promulgated a final rule

³ The court’s judgment is not yet final as the mandate has not issued and on October 5, 2012, EPA filed a petition asking for rehearing *en banc*.

through a notice-and-comment rulemaking process, States have had an opportunity to draft and submit SIPs, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating a Federal Implementation Plan (FIP) if appropriate. These steps alone will take many years, even with EPA and the states acting expeditiously.

For these reasons, EPA believes it is appropriate to allow Connecticut to rely on CAIR at this time, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable for purposes such as visibility improvement for the first Regional Haze planning period and BART. Following promulgation of the replacement rule, EPA will take action to require states to revise their regional haze SIPs to address the BART requirements. At that time, EPA will also determine whether, and to what extent, the replacement rule provides for greater reasonable progress than case by case BART.

IV. EPA's Supplemental Proposed Action

EPA is proposing to approve Connecticut's use of the existing federally enforceable RCSA Section 22a-174-22c, "The Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_x) Ozone Season Trading Program," as originally submitted by the State on November 18, 2009, as one component of its alternative to BART program. We are also withdrawing our previous proposed approval of RCSA Section 22a-174-22d as one element of Connecticut's alternative to BART plan. EPA is soliciting public comments on the issues discussed in this notice. EPA is only taking comment on the use of ozone season CAIR as part of Connecticut's Alternative to BART program. These comments will be considered before taking final action. Interested parties may

participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this Federal Register.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 et seq.

Dated: January 11, 2013.

Ira W. Leighton,
Acting Regional Administrator,
EPA Region 1.

[FR Doc. 2013-01417 Filed 01/23/2013 at 8:45 am;
Publication Date: 01/24/2013]